

FILE COPY

FILED

FEB 14 1948

AS ELMORE CROWN
D.A.E.

Supreme Court of the United States

OCTOBER TERM 1947.

No. 523.

ARTHUR SHILMAN,

Petitioner,

—against—

THE UNITED STATES OF AMERICA, WAR SHIPPING
ADMINISTRATION and GRACE LINE, INC.,

Respondents.

REPLY BRIEF FOR PETITIONER.

This brief will address itself to two new issues raised by the brief for respondents filed in opposition to the petition. The first is that since the Government intends to pay the judgment rendered against it, petitioner's cause of action is extinguished; the second, that the relationship between respondent Grace Line, Inc., and the vessel, differs from the relationship considered in *Hust v. Moore McCormack Lines Inc.*, 328 U. S. 707.*

* The respondents' brief also introduces the novel suggestion, never before urged, that petitioner is to be regarded as a civil service employee (Br., pp. 2, 5). It supports this position by reference to Civil Service Rules, Schedule A, Sec. XXIC1), promulgated by Executive Order No. 9247, which declares that among those excluded from the competitive civil service are "all positions on Government owned ships operated by the U. S. Maritime Commission." The vessel on which petitioner served was operated by Grace Line, Inc., as General Agent for War Shipping Administration, not the Maritime Commission, so it is difficult to understand the significance of the citation of the Civil Service Rules. Executive Order No. 9247, to which reference is also made, is not at all in point, and does not touch upon either the Maritime Commission or War Shipping Administration. Moreover, any doubt which can survive is laid at rest by the Clarification Act of 1943 (Act of March 24, 1943, sec. 1(a); Tit. 50 U. S. C. War App. Sec. 1291(a)) which specifically excludes employees on War Shipping Administration vessel from Civil Service benefits, and continues their rights as privately employed seamen. If Respondents' contention is made seriously, then they have supplied an additional reason why this Court should grant certiorari, since the implications of considering such merchant seamen as civil service employees, are far reaching.

I.

THE CAUSE OF ACTION IS NOT EXTINGUISHED.

The decree in this case grants the petitioner relief against the United States, but dismisses the libel as against the Grace Line, Inc. The petitioner seeks review only of so much of the decree as is adverse to him. He is obviously not concerned with that portion of the decree favorable to him. The brief in opposition, however, is on behalf of both the United States and Grace Line Inc. It is difficult to understand what interest the United States asserts. A party who does not appeal, and against which an appeal is not taken will not, as a rule, be heard.

The Government declares that it does not intend to seek review of the decree rendered against it, and that it will satisfy the judgment against the Government "in due course." This naked statement is the foundation of its contention that petitioner's cause of action against Grace Line, Inc. is extinguished. This assumes (1) that a mere statement of intention, is the equivalent of the accord and satisfaction which was entered into after judgment, leading this Court to dismiss the appeal in *Dakota County v. Glidden*, 113 U. S. 222, or (2) that there was unequivocal submission to the judgment by the petitioner which led to the same result in *Little v. Bowers*, 134 U. S. 547. The differences are, of course, apparent. In *Dakota County v. Glidden*, the very parties to the appeal adjusted their differences by agreement. In *Little v. Bowers*, the petitioner, in effect, abandoned his appeal, by a voluntary satisfaction of the judgment. In both cases, there was complete execution.

Respondents' second assumption is that the petitioner stands in the same footing with respect to a decree against the United States, as he does with respect to a decree against Grace Line, Inc. This is not, of course, accurate. To cite one difference, the rate of interest on a money judgment against the United States is limited to four percent annually from the date of the decree (28 U. S. C. A. § 765); against

others it is not so limited. Moreover, there is no effective manner in which the petitioner can enforce his judgment against the United States; while he would have the usual right of speedy execution against Grace Line, Inc. without any need for awaiting the sovereign's pleasure in deciding when it may be willing to make payment.

The petitioner's claim remains unsatisfied. He has not been paid from any source. But the mere possibility that he will be paid by one party does not pre-check him from proceeding against the other, especially since his remedies are not identical. *Fifth Avenue Bank of N. Y. v. Hammond Realty Co.*, 130 Fed. (2d) 993, cert. den. 318 U. S. 765 (7th Cir. 1942). No prejudice can result to either respondent. To the extent that petitioner satisfies his decree against one, the other is benefited. *Fifth Avenue Bank of N. Y. v. Hammond Realty Co.*, *supra*, 994.

II.

HUST v. MOORE McCORMACK LINES, INC., 328 U. S. 707, CONTROLS THE RELATIONSHIP OF THE PARTIES.

The brief in opposition suggests that the respondent Grace Line, Inc. was merely a "ship's husband", and not a General Agent such as was considered in the *Hust* case. The fixing of the obligation of the General Agent in that case was on the basis of the General Agency Agreement. The stipulation of facts herein (R. 10, 15) describes the status of Grace Line, Inc. in terms of that agreement, which is ~~identical~~ with the one involved in the *Hust* case. What this Court found with reference to the obligation of the General Agent in that case must, *a fortiori* apply here.

CONCLUSION.

The reasons why this petition should be granted need not be reiterated here. But brief mention should be made of the great importance of expeditious disposition of such causes of action. Unless the right to look to the General Agent for payment of wages, as well as for damages for personal injuries, is enforced, all such claims, universally considered preferred causes, will be remitted to the Suits in Admiralty Act in the Federal Courts. The congested condition of the Admiralty Calendar, especially in United States District Court for the Southern District of New York, has long been a matter of profound concern. (See Editorial, New York Times, February 7, 1948, p. 14.) A decision in this case, reversing the decree dismissing the libel against Grace Lines can contribute materially to a solution of that problem.

Respectfully submitted,

✓ WILLIAM L. STANDARD,
Attorney for Petitioner.

LOUIS R. HAROLDS,
HERMAN ROSENFELD,
On the Brief.